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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**FATIMA ALMAZAN**, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

**SUNPATH LTD.**; and DOES 1-10,  
inclusive,

Defendant.

**Case No.:**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF  
PURSUANT TO THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C. §  
227, *ET SEQ.***

**JURY TRIAL DEMANDED**

**INTRODUCTION**

1. **FATIMA ALMAZAN** (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of **SUNPATH LTD.** (“Defendant”), in negligently and willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”) and related regulations. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other

1 matters, upon information and belief, including investigation conducted by her  
2 attorneys.

3 2. The TCPA was designed to prevent calls and messages like the ones  
4 described within this complaint, and to protect the privacy of citizens like Plaintiff.  
5 “Voluminous consumer complaints about abuses of telephone technology – for  
6 example, computerized calls dispatched to private homes – prompted Congress to  
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice  
9 as to how creditors and telemarketers may call them, and made specific findings  
10 that “[t]echnologies that might allow consumers to avoid receiving such calls and  
11 messages are not universally available, are costly, are unlikely to be enforced, or  
12 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.  
13 Toward this end, Congress found that

14  
15 [b]anning such automated or prerecorded telephone calls to the home,  
16 except when the receiving party consents to receiving the call or when  
17 such calls are necessary in an emergency situation affecting the health  
18 and safety of the consumer, is the only effective means of protecting  
telephone consumers from this nuisance and privacy invasion.

19 *Id.* at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL  
20 3292838, at\* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s  
21 purpose).

22 4. Congress also specifically found that “the evidence presented to the  
23 Congress indicates that automated or prerecorded calls are a nuisance and an  
24 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also*  
25 *Mims*, 132 S. Ct. at 744.

26 5. In a recent decision, the Supreme Court interpreted the term  
27 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic  
28 telephone dialing system,’ a device must have the capacity either to store a

1 telephone number using a random or sequential generator *or* to produce a telephone  
2 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,  
3 141 S.Ct. 1163 (2021) (emphasis added).

4 6. In *Duguid*, the Supreme Court provided an example of such systems,  
5 stating: “For instance, an autodialer might use a random number generator to  
6 determine the order in which to pick phone numbers from a preproduced list. It  
7 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

8 7. Further, both *Duguid* and the legislative history of the TCPA are clear  
9 that the original focus on prerecorded voice technology prohibition was the fact  
10 that such communications involved agentless calls, not on the question of whether  
11 a literal voice was used during those agentless calls. *See* Hearing Before the  
12 Subcommittee on Communications of the Committee on Commerce, Science and  
13 Transportation, United States Senate One Hundred Second Congress First Session  
14 July 24, 1992, Testimony of Robert Bulmash and Steve Hamm at pg 11; 7 FCC  
15 Rcd. 8752 (F.C.C. September 17, 1992).

16 8. The Sixth Circuit has also recognized this distinction: “Congress drew  
17 an explicit distinction between ‘automated telephone calls that deliver an artificial  
18 or prerecorded voice message’ on the one hand and ‘calls place by ‘live’ persons’  
19 on the other.” *Ashland Hosp. Corp. v. Serv. Employees Int’l Union, Dist. 1199*  
20 *WV/KY/OH*, 708 F.3d 737,743 (6th Cir. 2013).

21 9. Similarly, the FTC has observed that “prerecorded calls are by their  
22 very nature one-sided conversations, and if there is no opportunity for consumers  
23 to ask questions, offers may not be sufficiently clear for consumers to make  
24 informed choices before pressing a button or saying yes to make a purchase.” 73  
25 FR 51164-01, 51167 (Aug. 29, 2008).

#### 26 27 JURISDICTION AND VENUE

28 10. Jurisdiction is proper under 28 U.S.C. § 1331 because this action

1 arises under a federal statute, the Telephone Consumer Protection Act, 47 U.S.C.  
2 § 227, *et seq.*

3 11. Venue is proper in the United States District Court for the Central  
4 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because  
5 Defendant does business within the State of California and Plaintiff resides within  
6 this district.

#### 7 **PARTIES**

8 12. Plaintiff is, and at all times mentioned herein, was a citizen and  
9 resident of the State of California. Plaintiff is, and at all times mentioned herein  
10 was, a “person” as defined by 47 U.S.C. § 153 (39). Plaintiff was physically in  
11 California at the time she received the alleged call from Defendant.

12 13. Plaintiff is informed and believes, and thereon alleges, that Defendant  
13 is a corporation of the State of Delaware. Defendant, and all of its agents, are and  
14 at all times mentioned herein were “persons,” as defined by 47 U.S.C. § 153 (39).  
15 Plaintiff alleges that at all times relevant herein, Defendant conducted business in  
16 the State of California and in the County of Orange, and within this judicial district.

#### 17 **FACTUAL ALLEGATIONS**

18 14. On or about January 27, 2022, Plaintiff received an incoming call from  
19 Defendant on her cellular telephone number ending in -4892.

20 15. Defendant’s call consisted of an artificial and/or prerecorded voice  
21 message seeking to solicit Plaintiff to purchase Defendant’s products and/or  
22 services.

23 16. Defendant did not have Plaintiff’s prior express consent to contact her  
24 on her cellular phone.

25 17. Based on the content of Defendant’s call, specifically the use of an  
26 artificial voice message, Plaintiff alleges that it was placed using an “automatic  
27 telephone dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) as  
28 prohibited by 47 U.S.C. § 227(b)(1)(A).

1 18. The telephone number that Defendant, or their agent called was  
2 assigned to a cellular telephone service for which Plaintiff incurs charges for  
3 incoming texts and calls pursuant to 47 U.S.C. § 227(b)(1).

4 19. Defendant's call was not for emergency purposes as defined by 47  
5 U.S.C. § 227(b)(1)(A)(i).

6 20. Plaintiff was never a customer of Defendant and never provided her  
7 cellular telephone number to Defendant for any reason whatsoever. Accordingly,  
8 Defendant and their agents never received Plaintiff's prior express consent to  
9 receive unsolicited telemarketing calls, pursuant to 47 U.S.C. § 227(b)(1)(A).

#### 10 CLASS ACTION ALLEGATIONS

11 21. Plaintiff brings this action on behalf of herself and on behalf of and all  
12 others similarly situated, as a member of the proposed Class ("Class").

13 22. Plaintiff represents, and is a member of, the Class, defined as follows:  
14 all persons within the United States who received any unsolicited telemarketing  
15 calls placed using an ATDS or an artificial or prerecorded voice from Defendant,  
16 which call was not made for emergency purposes or with the recipient's prior  
17 express consent within the four years prior to the filing of the Complaint through  
18 the date of class certification.

19 23. Defendant, its employees and agents are excluded from the Class.  
20 Plaintiff does not know the number of members in the Class, but believes the Class  
21 members number in the thousands, if not more. Thus, this matter should be  
22 certified as a Class action to assist in the expeditious litigation of this matter.

23 24. This suit seeks only damages and injunctive relief for recovery of  
24 economic injury on behalf of the Class, and it expressly is not intended to request  
25 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
26 right to expand the Class definitions to seek recovery on behalf of additional  
27 persons as warranted as facts are learned in further investigation and discovery.  
28

1           25. The joinder of all Class members is impractical and the disposition of  
2 their claims in the Class action will provide substantial benefits both to the parties  
3 and to the court. The Class can be identified through Defendant's records or  
4 Defendant's agents' records.

5           26. Plaintiff and members of the Class were harmed by the acts of  
6 Defendant in at least the following ways: Defendant, either directly or through their  
7 agents, illegally contacted Plaintiff and the Class members via their cellular  
8 telephones by using solicitation/marketing calls, thereby causing Plaintiff and the  
9 Class members to incur certain cellular telephone charges or reduce cellular  
10 telephone time for which Plaintiff and the Class members previously paid, and  
11 invading the privacy of said Plaintiff and the Class members. Plaintiff and the  
12 Class members were damaged thereby.

13           27. There is a well-defined community of interest in the questions of law  
14 and fact involved affecting the Class members. The questions of law and fact  
15 common to the Class predominate over questions which may affect individual  
16 Class members, including the following:

- 17           a) Whether, within the four years prior to the filing of this Complaint  
18 through the date of class certification, Defendant or their agents made  
19 any calls (other than a call or message made for emergency purposes  
20 or made with the prior express consent of the called party) to any Class  
21 member using any automatic dialing system or artificial or  
22 prerecorded voice to any telephone number assigned to a cellular  
23 phone service;  
24           b) Whether Plaintiff and the Class members were damaged thereby, and  
the extent of damages for such violation; and  
25           c) Whether Defendant and their agents should be enjoined from  
26 engaging in such conduct in the future.

27           28. As a person that received at least one solicitation call without  
28 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the  
Class. Plaintiff will fairly and adequately represent and protect the interests of the  
Class in that Plaintiff has no interests antagonistic to any member of the Class.



35. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b), Plaintiff and the Class members are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

36. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION  
KNOWING AND/OR WILLFUL VIOLATIONS OF THE  
TELEPHONE CONSUMER PROTECTION ACT  
47 U.S.C. § 227(B)**

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227(b).

39. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

40. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and members of the Classes, the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. § 227(B)**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF  
THE TCPA, 47 U.S.C. § 227(B)**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**TRIAL BY JURY**

41. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: June 30, 2023

Respectfully submitted,

**THE LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

By: s/ Todd M. Friedman  
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